

UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

ART OF LIVING FOUNDATION,

No. C 10-05022 LB

Plaintiff,

v.

**ORDER RE PLAINTIFF'S MOTION
FOR ADMINISTRATIVE RELIEF TO
TAKE EXPEDITED DISCOVERY
[ECF No. 5]**

DOES 1-10,

Defendant(s).

I. INTRODUCTION

On November 5, 2010, Plaintiff Art of Living Foundation filed this lawsuit against Doe Defendants, asserting claims for copyright infringement under federal law and misappropriation of trade secrets, defamation, and trade libel under California law. *See* Complaint, ECF No.1. On November 9, 2010, Plaintiff filed the instant Motion for Administrative Relief to Take Expedited Discovery pursuant to Federal Rule of Civil Procedure 26(d). ECF No. 5. Specifically, Plaintiff requests that the Court allow it to serve subpoenas on two third-parties to obtain information identifying the Doe Defendants so that Plaintiff can complete service of process on them.

As discussed below, Plaintiff has demonstrated that: (1) the Doe Defendants are real people who may be sued in federal court; (2) it has unsuccessfully attempted to identify the Doe defendants prior to filing this Motion; (3) its claims against the Doe Defendants could survive a motion to dismiss; and (4) there is a reasonable likelihood that service of the proposed subpoenas on the two third-parties will lead to information identifying the Doe Defendants. The Court therefore finds that

1 Plaintiff has established good cause exists to allow it to engage in this preliminary discovery.
 2 Accordingly, the Court **GRANTS** Plaintiff's Motion.

3 **II. BACKGROUND**

4 Plaintiff is the United States chapter of The Art of Living Foundation, an international
 5 educational and humanitarian organization that offers courses focusing on Sudarshan Kriya – a
 6 rhythmic breathing exercise – and its related practices. Compl. ¶¶ 2, 3, ECF No. 1 at 2. Plaintiff
 7 alleges that the Doe Defendants “are disgruntled former student-teachers and students” who have
 8 “perpetuated an attack-campaign against Plaintiff” by creating two blogs where they published
 9 Plaintiff's confidential trade secrets and copyrighted material and made false and defamatory
 10 statements about Plaintiff and its teachings. *Id.* ¶¶ 4-7. Specifically, Plaintiff alleges that beginning
 11 in November 2009, the Doe Defendants started a blog entitled, “Leaving the Art of Living,” located
 12 at artoflivingfree.blogspot.com. *Id.* ¶ 53. Plaintiff further alleges that a year later, in November
 13 2010, the Doe Defendants started a second blog entitled, “Beyond the Art of Living,” located at
 14 aolfree.wordpress.com. *Id.* ¶ 54. According to Plaintiff, the Doe Defendants regularly post
 15 defamatory comments about Plaintiff and Ravi Shankar and have reproduced and displayed
 16 Plaintiff's copyrighted material and confidential trade secrets on the blogs. *Id.* ¶¶ 57, 60-63, 67, 68.
 17 Because the individuals have published the statements under pseudonyms, Plaintiff does not know
 18 their identities and is unable to name them in the Complaint or to complete service of process on
 19 them. *Id.* ¶ 59; Motion, ECF No. 5 at 3; Declaration of Karl S. Kronenberger, ¶¶ 4, 6, 7, ECF No. 6
 20 at 2, 5 6. Plaintiff therefore requests that, pursuant to Federal Rule of Civil Procedure 26(d), the
 21 Court grant it leave to serve subpoenas on Google, Inc., and Automattic, Inc., which operate the sites
 22 that host the blogs, so that Plaintiff may obtain the names and locations of the Doe Defendants.
 23 Motion, ECF No. 5 at 4-5.

24 **III. DISCUSSION**

25 **A. Legal Standard for Leave to Take Early Discovery**

26 A court may authorize early discovery before the Rule 26(f) conference for the parties' and
 27 witnesses' convenience and in the interests of justice. Fed. R. Civ. P. 26(d). Courts in this district
 28 generally consider whether a plaintiff has shown “good cause” for the early discovery. *See, e.g., IO*

1 *Group, Inc. v. Does 1-65*, No. C 10-4377 SC, 2010 WL 4055667, at *2 (N.D. Cal. Oct. 15, 2010);
 2 *Semitoool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 275-277 (N.D. Cal. 2002). Other
 3 districts in the Ninth Circuit apply the same standard. *See, e.g., Texas Guaranteed Student Loan*
 4 *Corp. v. Dhindsa*, No. C 10-0035, 2010 WL 2353520, at * 2 (E.D. Cal. June 9, 2010); *United States*
 5 *v. Distribuidora Batiz CGH, S.A. De C.V.*, No C 07-370, 2009 WL 2487971, at *10 (S.D. Cal. Aug.
 6 10, 2009); *Yokohama Tire Crop. v. Dealers Tire Supply, Inc.*, 202 F.R.D. 612, 613-14 (D. Ariz.
 7 2001) (collecting cases and standards).

8 When the identity of defendants is not known before a complaint is filed, a plaintiff “should be
 9 given an opportunity through discovery to identify the unknown defendants, unless it is clear that
 10 discovery would not uncover the identities, or that the complaint would be dismissed on other
 11 grounds.” *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)). In evaluating whether a plaintiff
 12 establishes good cause to learn the identity of Doe defendants through early discovery, courts
 13 examine whether the plaintiff (1) identifies the Doe defendant with sufficient specificity that the
 14 court can determine that the defendant is a real person who can be sued in federal court, (2) recounts
 15 the steps taken to locate and identify the defendant, (3) demonstrates that the action can withstand a
 16 motion to dismiss, and (4) proves that the discovery is likely to lead to identifying information that
 17 will permit service of process. *Io Group*, 2010 WL 4055667 at * 1; *Columbia Ins. Co. v.*
 18 *Seescandy.com*, 185 F.R.D. 573, 578-80 (N.D. Cal. 1999).

19 **B. Plaintiff Has Shown Good Cause**

20 Here, Plaintiff has made a sufficient showing under each of the four factors listed above to
 21 establish good cause to permit it to engage in early discovery to identify the Doe Defendants.

22 First, Plaintiff has identified the possible Doe defendants with sufficient specificity by
 23 identifying the pseudonyms they have used to post defamatory statements about Plaintiff and to post
 24 Plaintiff’s copyrighted materials and trade secrets. *See Kronenberger Decl.*, ¶¶ 3, 4, 6, 7, ECF No. 6
 25 at 2, 6.

26 Second, Plaintiff has adequately described the steps taken to locate and identify the Doe
 27 defendants. *See Kronenberger Decl.*, ¶ 3, ECF No. 6 at 3. Plaintiff has reviewed the posts on the
 28 Blogspot and Wordpress blogs to ascertain information identifying the blogs’ respective authors and

1 contributors. *Id.* However, the individuals have used fictitious names when posting their statements
2 about Plaintiff. *Id.* ¶¶ 3, 4, 6, 7.

3 Third, reviewing Plaintiff's Complaint, Plaintiff has sufficiently asserted the essential elements
4 and facts in support of each of its four claims. *See* Compl. ECF No. 1 at 13-18.

5 Fourth, Plaintiff has demonstrated that the subpoena seeks information likely to lead to
6 identifying information that will allow Plaintiff to effect service of process on the Doe defendants.
7 The first subpoena is directed to Google, Inc., which owns Blogger, the host of the Blogspot Blog,
8 and seeks account information, such as the name, address, phone number, Internet protocol (IP)
9 address, Media Access Control (MAC) address, and email addresses associated with: (1) the
10 individual(s) who established and maintain control of the blog located at
11 artoflivingfree.blogspot.com; (2) the Blogger User Profile associated with the blog: AoL-Free; and
12 (3) the email account reklawyksekul@gmail.com. *See* Ex. A to Kroenenberger Decl., ECF No. 6-1
13 at 7. In its second proposed subpoena directed to Automattic, Inc., Plaintiff seeks information
14 sufficient to identify the user data and account holder of: (1) the individual(s) who established and
15 maintain control of the blog located at aolfree.wordpress.com; (2) and the WordPress usernames
16 "Skywalker," "Peaceful Warrior," "Prosecutor," and "Aolwhistleblower"; and (3) the Gravatar
17 profiles for "Aolwhistleblower," "Mcauthon," "Skyklm," and "artoflivingfeedback" associated with
18 the blog. Thus, the information sought is minimally intrusive on Google, Inc. and Automattic, and
19 the subpoenas are narrowly tailored to seek only information that will allow Plaintiff to identify
20 those operating the blogs and posting the alleged defamatory statements and Plaintiff's intellectual
21 property. *See* Ex. B to Kronenberger Decl., ECF No. 6-1 at 9-14.

22 Taken together, the Court finds that the foregoing factors demonstrate good cause exists to grant
23 Plaintiff leave to conduct early discovery to identify the Doe Defendants. *See Semitool*, 208 F.R.D.
24 at 276. Further, the Court finds that early discovery furthers the interests of justice and poses little,
25 if any, inconvenience to the subpoena recipients. Permitting Plaintiff to engage in this limited, early
26 discovery is therefore consistent with Rule 26(d).

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IV. CONCLUSION

For the reasons stated above,

The Court **GRANTS** Plaintiff's Motion for Administrative Relief (ECF No. 5) as follows. Plaintiff may serve discovery on Google, Inc., and Automattic, Inc., to obtain information regarding the identities of the Doe Defendants in accordance with the following procedure.

1. Plaintiff shall issue and serve the proposed subpoenas attached as Exhibits A and B to the Kronenberger Declaration on Google, Inc., and Automattic, Inc., respectively, along with a copy of this Order.

2. Google Inc. and Automattic, Inc., will have 20 days from the date of service upon them to serve the account holders with a copy of the subpoena and a copy of this Order. Google, Inc. and Automattic, Inc., may provide notice using any reasonable means, including written notice sent to the account holder's last known address, transmitted either by first-class mail or via overnight service.

3. The account holders shall have 30 days from the date of service upon them to file any motions with this Court contesting the subpoena (including a motion to quash or modify the subpoena). If that 30-day period lapses without an account holder contesting the subpoena, Google, Inc., and Automattic, Inc., shall have 10 days to produce the information responsive to the subpoena to Plaintiff.

4. Plaintiff shall be responsible for reimbursing Google, Inc. and Automattic, Inc., all reasonable costs of: (1) compiling the requested information; (2) providing pre-disclosure notifications to the account holders; and (3) all other reasonable costs and fees incurred responding to discovery. Google, Inc., and Automattic, Inc., shall provide Plaintiff with the amount of this reasonable payment upon the termination of the targeted account holders' 30-day notice period.

IT IS SO ORDERED.

Dated: December 17, 2010



LAUREL BEELER
United States Magistrate Judge